



***Substitute House Bill No. 6772***

***Public Act No. 05-174***

***AN ACT CONCERNING FLOOD MANAGEMENT AND THE STREAM  
CHANNEL ENCROACHMENT PROGRAM.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 25-68b of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

As used in sections 25-68b to 25-68h, inclusive, as amended by this act:

(1) "Activity" means any proposed state action in a floodplain or any proposed state action that impacts natural or man-made storm drainage facilities [, including, but not limited to, the following: (a) Any structure, obstruction or encroachment proposed for emplacement within the floodplain area; (b) any proposal for site development which increases peak runoff rates; (c) any grant or loan which affects land use, land use planning or the disposal of state properties in floodplains, or (d) any program regulating flood flows within the floodplain] that are located on property that the commissioner determines to be controlled by the state;

(2) "Base flood" means that flood which has a one per cent chance of being equaled or exceeded in any year, as defined in regulations of the National Flood Insurance Program (44 CFR 59 et seq.) or that flood

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designated by the commissioner pursuant to section 25-68c. Any flood so designated by the commissioner shall have at least a one per cent chance of being equaled or exceeded in any year. Such flood may be designated as the A or V zones on maps published by the National Flood Insurance Program. The "base flood for a critical activity" means the flood that has at least a .2 per cent chance of being equaled or exceeded in any year. Such flood may be designated as the B zone on maps published for the National Flood Insurance Program;

(3) "Commissioner" means the Commissioner of Environmental Protection;

(4) "Critical activity" means any activity, including, but not limited to, the treatment, storage and disposal of hazardous waste and the siting of hospitals, housing for the elderly, schools or residences, in the .2 per cent floodplain in which the commissioner determines that a slight chance of flooding is too great;

(5) "Floodplain" means that area located within the real or theoretical limits of the base flood or base flood for a critical activity;

(6) "Flood-proofing" means any combination of structural or nonstructural additions, changes or adjustments which reduce or eliminate flood damage to real estate or improved real property, to water and sanitary facilities, and to structures and their contents;

(7) "Freeboard" means a safety factor, expressed in feet above a calculated flood level, that compensates for unknown factors contributing to flood heights greater than the calculated height, including, but not limited to, ice jams, debris accumulations, wave actions, obstructions of bridge openings and floodways, the effects of urbanization on the hydrology of a watershed, loss of flood storage due to development and sedimentation of a watercourse bed;

(8) "Proposed state action" means individual activities or a sequence

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of planned activities proposed to be undertaken by a state department, institution or agency, any state or federal grant or loan proposed to be used to fund a project that affects land use, or proposed transfer of real property belonging to the state.

Sec. 2. Section 25-68c of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

The commissioner shall have the following powers and duties under sections 25-68b to 25-68h, inclusive, as amended by this act:

(1) To coordinate, monitor and analyze the floodplain management activities of state and local agencies;

(2) To coordinate flood control projects within the state and be the sole initiator of a flood control project with a federal agency;

(3) To act as the primary contact for federal funds for floodplain management activities sponsored by the state;

(4) To regulate actions by state agencies affecting floodplains except conversion by The University of Connecticut of commercial or office structures to an educational structure;

(5) To regulate proposed state actions that impact natural or man-made storm drainage facilities located on property that the commissioner determines to be controlled by the state, including, but not limited to, programs that regulate flood flows within a floodplain and site development that increases peak runoff rates;

[(5)] (6) To designate a repository for all flood data within the state;

[(6)] (7) To assist municipalities and state agencies in the development of comprehensive floodplain management programs;

[(7)] (8) To determine the number and location of state-owned

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structures and uses by the state in the floodplain and to identify measures to make such structures and uses less susceptible to flooding including flood-proofing or relocation;

[(8)] (9) To mark or post the floodplains within lands owned, leased or regulated by state agencies in order to delineate past and probable flood heights and to enhance public awareness of flood hazards;

[(9)] (10) To designate the base flood or base flood for a critical activity where no such base flood is designated by the National Flood Insurance Program. The commissioner may add a freeboard factor to any such designation;

[(10)] (11) To require that any flood control project be designed to provide protection equal to or greater than the base flood.

Sec. 3. Section 25-68d of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

(a) No state agency shall undertake an activity or a critical activity within or affecting the floodplain without first obtaining an approval or approval with conditions from the commissioner of a certification submitted in accordance with subsection (b) of this section or exemption by the commissioner from such approval or approval with conditions in accordance with subsection (d) of this section.

(b) Any state agency proposing an activity or critical activity within or affecting the floodplain shall submit to the commissioner information certifying that:

(1) The proposal will not obstruct flood flows or result in an adverse increase in flood elevations, significantly affect the storage or flood control value of the floodplains, cause an adverse increase in flood velocities, or an adverse flooding impact upon upstream, downstream or abutting properties, or pose a hazard to human life, health or

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property in the event of a base flood or base flood for a critical activity;

(2) The proposal complies with the provisions of the National Flood Insurance Program (44 CFR 59 et seq.), and any floodplain zoning requirements adopted by a municipality in the area of the proposal and the requirements for stream channel encroachment lines adopted pursuant to the provisions of section 22a-342;

(3) The agency has acquired, through public or private purchase or conveyance, easements and property in floodplains when the base flood or base flood for a critical activity is elevated above the increment authorized by the National Flood Insurance Program or the flood storage loss would cause adverse increases in such base flood flows;

(4) The proposal promotes long-term nonintensive floodplain uses and has utilities located to discourage floodplain development;

(5) The agency has considered and will use to the extent feasible flood-proofing techniques to protect new and existing structures and utility lines, will construct dikes, dams, channel alterations, seawalls, breakwaters or other structures only where there are no practical alternatives and will implement stormwater management practices in accordance with regulations adopted pursuant to section 25-68h; and

(6) The agency has flood forecasting and warning capabilities consistent with the system maintained by the National Weather Service and has a flood preparedness plan.

(c) The commissioner shall make a decision either approving, approving with conditions or rejecting a certification [within] not later than ninety days [of] after receipt of such certification, except that in the case of an exemption any decision shall be made [within] ninety days [of] after the close of the hearing. If a certification is rejected, the agency shall be entitled to a hearing in accordance with the provisions

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of sections 4-176e, 4-177, 4-177c and 4-180.

(d) Any state agency proposing an activity or critical activity within or affecting the floodplain may apply to the commissioner for exemption from the provisions of subsection (b) of this section. Such application shall include a statement of the reasons why such agency is unable to comply with said subsection and any other information the commissioner deems necessary. The commissioner, [after public notice of the application and an opportunity for a public hearing in accordance with the provisions of chapter 54,] at least thirty days before approving, approving with conditions or denying any such application, shall publish once in a newspaper having a substantial circulation in the affected area notice of: (1) The name of the applicant; (2) the location and nature of the requested exemption; (3) the tentative decision on the application; and (4) additional information the commissioner deems necessary to support the decision to approve, approve with conditions or deny the application. There shall be a comment period following the public notice during which period interested persons and municipalities may submit written comments. After the comment period, the commissioner shall make a final determination to either approve the application, approve the application with conditions or deny the application. The commissioner may hold a public hearing prior to approving, approving with conditions or denying any application if in the discretion of the commissioner the public interest will be best served thereby, and the commissioner shall hold a public hearing upon receipt of a petition signed by at least twenty-five persons. Notice of such hearing shall be published at least thirty days before the hearing in a newspaper having a substantial circulation in the area affected. The commissioner may approve or approve with conditions such exemption if [he] the commissioner determines that [(1)] (A) the agency has shown that the activity or critical activity is in the public interest, will not injure persons or damage property in the area of such activity or critical

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activity, complies with the provisions of the National Flood Insurance Program, and, in the case of a loan or grant, the recipient of the loan or grant has been informed that increased flood insurance premiums may result from the activity or critical activity, or [(2)] (B) in the case of a flood control project, such project meets the criteria of [subdivision (1)] subparagraph (A) of this subdivision and is more cost-effective to the state and municipalities than a project constructed to or above the base flood or base flood for a critical activity. Following approval for exemption for a flood control project, the commissioner shall provide notice of the hazards of a flood greater than the capacity of the project design to each member of the legislature whose district will be affected by the project and to the following agencies and officials in the area to be protected by the project: The planning and zoning commission, the inland wetlands agency, the director of civil defense, the conservation commission, the fire department, the police department, the chief elected official and each member of the legislative body, and the regional planning agency. Notice shall be given to the general public by publication in a newspaper of general circulation in each municipality in the area in which the project is to be located.

(e) The failure of any agency to comply with the provisions of this section or any regulations adopted pursuant to section 25-68c, as amended by this act, shall be grounds for revocation of the approval of the certification.

(f) The provisions of this section shall not apply to any proposal by the department of transportation for a project within a drainage basin of less than one square mile.

Sec. 4. Section 22a-349 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

(a) The provisions of sections 22a-342 to 22a-348, inclusive, shall not be deemed to restrict agricultural or farming uses of lands located

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within the stream channel encroachment lines including the building of fences, provided this section shall not apply to farm buildings and farm structures.

(b) The following operations and uses shall be permitted within stream channel encroachment lines, as of right: (1) Lawns, gardens or vegetative plantings, (2) split rail fences, (3) open decks attached to residential structures, properly anchored in accordance with the State Building Code, (4) construction of minor structures to an existing facility for the purpose of providing handicap accessibility pursuant to the State Building Code, (5) temporary greenhouses or hoopouses constructed without permanent foundations and anchored pursuant to the State Building Code, (6) placement of fish habitat enhancement devices performed by or approved by the Commissioner of Environmental Protection, (7) demolition of an existing structure, (8) backfilling of foundations, (9) flood-proofing of existing structures, including, but not limited to, elevating structures in accordance with Federal Emergency Management Agency standards, (10) repair or installation of septic systems, (11) construction of irrigation systems, (12) installation of water monitoring structures performed by or approved by the Commissioner of Environmental Protection, (13) installation of dry hydrants, (14) driveway and roadway repair and maintenance that does not raise the existing road grade more than three inches, or (15) patios or walkways constructed at grade.

Sec. 5. Section 22a-349a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

(a) The Commissioner of Environmental Protection may issue a permit for any minor activity regulated under sections 22a-342 to 22a-349, inclusive, as amended by this act, except for any activity covered by an individual permit, if the commissioner determines that such activity would cause minimal environmental effects when conducted separately and would cause only minimal cumulative environmental



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effects, and will not cause any increase in flood heights or in the potential for flood damage or flood hazards. Such activities may include routine minor maintenance and routine minor repair of existing structures; replacement of existing culverts; installation of water monitoring equipment, including but not limited to staff gauges, water recording and water quality testing devices; removal of unauthorized solid waste; extension of existing culverts and stormwater outfall pipes; [placement of greenhouses or hoopouses lacking concrete foundations;] construction of irrigation and utility lines; and safety improvements with minimal environmental impacts within existing rights-of-way of existing roadways. Any person, firm or corporation conducting an activity for which a general permit has been issued shall not be required to obtain an individual permit under any other provision of said sections 22a-342 to 22a-349, inclusive, as amended by this act, except as provided in subsection (c) of this section. A general permit shall clearly define the activity covered thereby and may include such conditions and requirements as the commissioner deems appropriate, including but not limited to, management practices and verification and reporting requirements. The general permit may require any person, firm or corporation, conducting any activity under the general permit to report, on a form prescribed by the commissioner, such activity to the commissioner before it shall be covered by the general permit. The commissioner shall prepare, and shall annually amend, a list of holders of general permits under this section, which list shall be made available to the public.

(b) Notwithstanding any other procedures specified in said sections 22a-342 to 22a-349, inclusive, as amended by this act, any regulations adopted thereunder, and chapter 54, the commissioner may issue, revoke, suspend or modify a general permit in accordance with the following procedures: (1) The commissioner shall publish in a newspaper having a substantial circulation in the affected area or areas

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notice of intent to issue a general permit; (2) the commissioner shall allow a comment period of thirty days following publication of such notice during which interested persons may submit written comments concerning the permit to the commissioner and the commissioner shall hold a public hearing if, within said comment period, he receives a petition signed by at least twenty-five persons; (3) the commissioner may not issue the general permit until after the comment period; and (4) the commissioner shall publish notice of any permit issued in a newspaper having substantial circulation in the affected area or areas. Any person may request that the commissioner issue, modify or revoke a general permit in accordance with this subsection.

(c) Subsequent to the issuance of a general permit, the commissioner may require any person, firm or corporation, to apply for an individual permit under the provisions of said sections 22a-342 to 22a-349, inclusive, as amended by this act, for all or any portion of the activities covered by the general permit, if in the commissioner's judgment the purposes and policies of such sections would be best served by requiring an application for an individual permit. The commissioner may require an individual permit under this subsection only if the affected person, firm or corporation has been notified in writing that an individual permit is required. The notice shall include a brief statement of the reasons for the decision and a statement that upon the date of issuance of such notice the general permit as it applies to the individual activity will terminate.

(d) Any general permit issued under subsection (a) of this section [shall] may require that any person, firm or corporation intending to conduct an activity covered by such general permit [shall, at least sixty days before initiating such activity,] give written notice of such intention to the inland wetlands agency, zoning commission, planning commission or combined planning and zoning commission and conservation commission of any municipality which will or may be

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affected by such activity. [, and to the department which shall make such notices available to the public.] The general permit shall specify the information [which must] required to be contained in the notice. [An inland wetlands agency, planning and zoning commission, conservation commission or any person may submit written comments to the commissioner concerning such activity not later than twenty-five days prior to the date that the activity is proposed to begin.]

(e) The commissioner may adopt regulations in accordance with the provisions of chapter 54 to carry out the purposes of this section.

Approved July 1, 2005